

2003-47

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To the Michigan Supreme Court:

The Michigan Supreme Court should be commended for offering a fair and intelligent proposal for closing the gates on meritless asbestos lawsuits being filed by healthy people. By implementing this proposal, the Court would rescue Michigan families and job providers from the growing burden being imposed on them by the alarming increase in these types of lawsuits.

Unfortunately, many of the ³public comment² letters which have been sent to the Court regarding proposed administrative order 2003-47 provide a very flawed look at this plan. Therefore, we would like to take this opportunity to focus on comments that have been made by legal experts and family members of asbestos victims in support of the idea that lawsuits by healthy people should be treated differently than lawsuits by sick people. The highly-orchestrated campaign by the personal injury lawyers and their allies to slur this proposal should not overshadow the facts which point to the need for such a proposal, nor should they discourage the Court from moving forward with this innovative solution.

Citizens reading these public comments need to be aware that the asbestos litigation problem facing our society has become so massive that many political leaders and groups which often oppose each other on public policy issues have united in their plea for a solution - an approach that will weed out the frivolous asbestos cases from our courts and allow the legitimate claims to move forward. The job providers who stand to lose millions of dollars defending themselves against frivolous lawsuits would certainly be expected to demand protection from this abuse of the courts as they have done. But now, respected lawyers who are well-known for defending the interests of consumers take a leadership role in calling for reasonable limits on asbestos lawsuits.

Early in 2003, former Michigan Supreme Court justice and Detroit mayor, Dennis Archer, took a courageous stand in support of limiting asbestos lawsuits to those who are ill. He also undeservedly received a lot of grief from some of his fellow attorneys for doing so. As president of the American Bar Association, Mr. Archer created a study group which found egregious examples of doctors for asbestos screening firms who either declared every person they examined to be ill or who stated that they were paid more by plaintiff's lawyers for positive findings of illness than for negative results. To help eliminate this abuse, the ABA eventually urged Congress to place limits on those who can sue by setting medical standards to differentiate between people who are seriously sick and those who are not.

Later in the year, a widely-respected attorney who was appointed to be a judge in the federal courts by President John F. Kennedy and who later served as U.S. Attorney General under President Jimmy Carter said the growing mass of asbestos claims ³would cause our founding fathers to shake their heads in disbelief.² Judge Griffin Bell made those comments, and he has applauded the ABA's effort to limit asbestos lawsuits to ³those who are actually sick from asbestos exposure.² Most importantly, he says that a lack of legislative or judicial leadership will damage sick claimants the most because they do not have the luxury of time.

The response from personal injury lawyers to the ABA's straightforward proposal to restrict legal recoveries to people who are actually sick from asbestos exposure was as strident and off-base then as the current attacks on the Michigan Supreme Court's proposal are now. In published reports, the president of the Association of Trial Lawyers of America criticized the ABA proposal claiming that it would close courts to 90 percent of people who have sued. Now, in public comments to the Court, well-known personal injury lawyers are claiming that proposed administrative order 2003-47 would also close the courts to the injured. Nothing could be further from the truth.

Many families who have lost loved-ones to asbestos-induced cancer know what kind of hardship is being caused by the flood of meritless asbestos lawsuits. Charisse Dahlke, whose husband died of a rare type of cancer caused by asbestos, pleaded with lawmakers in 2002 to pass a plan that will set clear national medical standards for asbestos lawsuits. She had to wait to get fair compensation because, in her words, ³there are thousands of people out there who are being encouraged to file asbestos-related claims even though they aren't sick.²

Countless job providers around Michigan could confirm what a nightmare the unchecked asbestos litigation crisis has caused them, but many, if not most, will not comment publicly out of fear that they will be targeted by plaintiff's lawyers for lawsuits. In my years of researching the affects of frivolous litigation on communities, I have never come across another issue which frightens job providers as much as prospect of being sued by someone who claims asbestos-related damages even though they are not injured.

With Congress failing to approve the kind of legislation being called for by victims like Charisse Dahlke and by leaders like Mr. Archer and Mr. Bell, it is now time for the courts to heed the call for action. Judges are supposed to be the gatekeepers to the courts. Under law, they are not supposed to allow every lawsuit to be heard as is being wrongly asserted by the personal injury lawyers who oppose this proposal.

The Michigan Supreme Court's proposal to create an inactive docket for

asbestos claims filed by healthy people is needed now more than ever in light of Congress' inability to approve objective medical criteria for asbestos-related impairments. Certainly, this plan is consistent with proposals by others to create medical criteria for asbestos lawsuits. The families of asbestos victims, the families with retirement and college savings invested in companies being unfairly targeted by frivolous asbestos lawsuits, and all people who believe in fairness, deserve to see proposed administrative order 2003-47 implemented.

Respectfully,

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"The fear of lawsuits has affected your family in ways you can't imagine, and now Newsweek magazine shows you how. A recent Newsweek cover story reveals how doctors, teachers, Little League coaches and many others are changing how they act around the rest of us because of a fear they could be the next target of a personal injury lawyer, even though they've done nothing wrong. Log on to <http://www.mlaw.org> for a link to this and more.